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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-90949; No. SR-NYSEArca-2021-06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule Regarding the Limits on Fees for Options Strategy Executions
January 19, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on January 13, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding the Limit of Fees on Options Strategy Executions. The Exchange proposes to implement the fee change effective January 13, 2021. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify the Limit of Fees on Options Strategy Executions ("Strategy Cap"), effective January 13, 2021.

Currently, the Fee Schedule provides that transaction fees for OTP Holders and OTP Firms (collectively, "OTP Holders") are limited or capped at $1,000 for certain options strategy executions "on the same trading day," meaning it is a daily fee cap.[4] Strategy executions that qualify for the Strategy Cap are (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls, which are described in detail in the Fee Schedule (the "Strategy Executions").[5]

The Exchange proposes to modify the Strategy Cap to offer a lower cap of $200 for those OTP Holders that trade at least 25,000 monthly billable contract sides in Strategy Executions.[6] Thus, at the end of the month, qualifying OTP Holders would have transaction fees for their Strategy Executions for each day of the month capped at $200 (as opposed to $1,000 for non-qualifying OTP Holders).[7]

For example, assume an OTP Holder executes the following Strategy Executions against interest in the Trading Crowd on the third business day of the month on behalf of a non-Customer that is not a Lead Market Maker, which participants are subject to a $0.25 per Manual transaction fee. Under the current Fee Schedule, an OTP Holder would be charged a total of

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4 See Fee Schedule, Limit of Fees on Options Strategy Executions, available here: https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

5 See id.

6 See proposed Fee Schedule, Limit of Fees on Options Strategy Executions.

7 See id.

$1,000 in options fees, per the daily fee cap:

- Trade 1: A Reversal Conversion in DEF comprised of 3,000 call options against 3,000 put options would be $1,500 (at $0.25 per execution), absent the $1,000 Strategy Cap.
- Trade 2: A Reversal Conversion in ABC comprised of 1,000 call options against 1,000 put options would be $500 (at $0.25 per execution), absent the Strategy Cap, but the OTP Holder, having reached the daily cap, would not be charged for these transactions.

However, if, in addition to the two trades above, the OTP Holder executes a "jelly roll" consisting of 5,000 October puts and 5,000 October calls against 5,000 November calls and 5,000 November puts on the fifteenth business day of the month, the total fees for these qualifying Strategy Executions under the proposed Fee Schedule would be capped at $200 for this trading day, given that the total number of contracts on day three and day fifteen is above the minimum 25,000 billable contract sides threshold. Similarly, having met this threshold, the fees charged on Trades 1 and 2 that were executed on the third business day would likewise be capped at $200. Thus, the fees for each of the third and fifteenth trading days would be capped at $200 each, for a monthly total of $400 for Strategy Executions.

The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including another exchange that provides a cap on fees for strategy executions.[8] Thus, OTP Holders have a choice of where they direct their order flow. This proposed change is designed to incent OTP Holders to increase their Strategy Execution volumes by executing (often smaller) strategies that are not necessarily economically viable on a per symbol basis, but which may be profitable when fees on Strategy

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[8] See, e.g., Cboe fee schedule, footnote 13. Cboe caps fees for each participant at $0.00 for the following strategies executed on the same trading day: short stock interest, reversal, conversion, jelly roll, and merger strategies.

Executions -- regardless of symbol -- are capped for the trading day. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any, or how many, OTP Holders would avail themselves of this proposed fee change. The Exchange believes that OTP Holders that execute Strategy Executions on the Exchange can achieve the proposed 25,000 minimum contract sides threshold to qualify for the proposed (reduced) Strategy Cap and that this proposal may encourage OTP Holders to execute (and aggregate) Strategy Executions on the Exchange, which order flow would enhance price discovery.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed

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9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(4) and (5).

companies."[11]

The Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, since November 2019, the Exchange has had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modification to the Strategy Cap is reasonable because it is designed to incent OTP Holders to increase their Strategy Executions submitted to and executed on the Exchange's Trading Floor. The Exchange offers a hybrid market system and aims to balance incentives for its OTP Holders to continue to contribute to deep liquid markets for investors on both its electronic and open outcry platforms. The Exchange notes that all

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11 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

12 The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.

13 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in multiply-listed equity and ETF options increased from 9.65% for the month of November 2019 to 10.35% for the month of November 2020.

market participants stand to benefit from any increase in volume transacted on the Trading Floor, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased (open outcry) order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including another exchange that provides a cap on fees for strategy executions.[14] Thus, OTP Holders have a choice of where they direct their order flow -- including their Strategy Executions. The proposed rule change is designed to incent OTP Holders to direct liquidity, and specifically Strategy Executions, to the Exchange, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Exchange cannot predict with certainty whether any, or how many, OTP Holders would avail themselves of this proposed fee change. The Exchange believes that OTP Holders that execute Strategy Executions on the Exchange can achieve the proposed 25,000 minimum contract sides threshold to qualify for the proposed (reduced) Strategy Cap and that this proposal

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[14] See supra note 8 (regarding Cboe capped fees for strategies).

may encourage OTP Holders to execute (and aggregate) Strategy Executions on the Exchange, which order flow would enhance price discovery.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and OTP Holders can opt to avail themselves of the Strategy Cap or not. The proposed Strategy Cap, as modified, applies to all qualifying Strategy Executions transacted on the Trading Floor. The Exchange believes that the proposed change would facilitate the execution of orders via open outcry, thus enhancing price discovery as a result of increased liquidity. Moreover, the proposal is designed to encourage OTP Holders to aggregate all Strategy Executions at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the Strategy Cap because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange and OTP Holders are not obligated to try to achieve the modified Strategy Cap, nor are they obligated to execute any Strategy Executions. Rather, the proposal is designed to encourage OTP Holders to utilize the Exchange as a primary trading venue for Strategy Executions (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would

continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[15]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Strategy Executions) to the Exchange. The Exchange believes that the

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[15] See Reg NMS Adopting Release, supra note 11, at 37499.

proposed modification to the Strategy Cap would incent market participants to direct their Strategy Execution volume to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Strategy Executions would increase opportunities for execution of other trading interest. The proposed reduced Strategy Cap would be available to all similarly-situated market participants that incur transaction fees on Strategy Executions, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[16] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in the third quarter of 2020, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.[17]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage OTP Holders to direct trading interest (particularly Strategy Executions) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's

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[16] See supra note 12.

[17] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see supra note 13, the Exchange's market share in multiply-listed equity and ETF options increased from 9.65% for the month of November 2019 to 10.35% for the month of November 2020.

market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar Strategy Caps, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[18] of the Act and subparagraph (f)(2) of Rule 19b-4[19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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18 15 U.S.C. 78s(b)(3)(A).

19 17 CFR 240.19b-4(f)(2).

20 15 U.S.C. 78s(b)(2)(B).

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2021-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEArca-2021-06, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,
Assistant Secretary.

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[21] 17 CFR 200.30-3(a)(12).